

VICTIMS' RIGHTS -- Victims are not "aggrieved parties" so as to allow them to file their own petitions for review under Rule 32.9, Ariz. R. Crim. P. Revised 5/2000

In *State v. Lamberton*, 183 Ariz. 47, 899 P.2d 939 (1995), the defendant pleaded guilty to child molestation. He later filed a petition for post-conviction relief under Rule 32, Ariz. R. Crim. P. The trial court granted relief. The victim and the State both filed petitions for review by the Court of Appeals, arguing that the trial court erred in granting relief. The victim argued that under Article II, § 2.1(A)(9), a victim has the right to be heard "at any proceeding when any post-conviction release from confinement is being considered." The Court of Appeals dismissed the victim's pleadings, stating that the remedy afforded by Rule 32.9, Ariz. R. Crim. P.

c. Petition for Review. Within thirty days after the final decision of the trial court on the petition for post-conviction relief or the motion for rehearing, any party aggrieved may petition the appropriate appellate court for review of the actions of the trial court.

"only extends to aggrieved parties; therefore, the Victim's Petition for Review is without the jurisdiction of this court." *Id.* at 48, 899 P.2d at 940. The Arizona Supreme Court agreed, stating that the victim is not a "party" to the action. The Court stated that neither the Victims' Bill of Rights nor the Victims' Rights Implementation Act gave victims the right to control the proceedings, to plead defenses, or to examine or cross-examine witnesses. The Victims' Bill of Rights "does not give the Victim the right to initiate criminal proceedings against a person, nor does it make the Victim a 'party' to all proceedings involving that defendant." *Id.* at 49, 899 P.2d at 941. Further, the victim was not "'aggrieved' within the legal meaning of the term because the judgment of the trial court does not operate to deny her some personal or property right, nor does it impose a substantial burden upon her." *Id.*

The Court also rejected the victim's claim that her constitutional right to be "heard" in the proceedings included the right to file a petition for review, stating that the implementing statutes and rules made it clear that the victim only had the right to be *notified* of post-conviction review and appellate proceedings. *Id.* The Court concluded

that the Victims' Bill of Rights obligates the prosecutor to communicate with the victim and "The prosecutor, on behalf of the State, is an 'aggrieved party' in this proceeding and is the proper party to file a petition for review. The prosecution can adequately represent the views of the Victim in its petition for review if it so chooses." *Id.* at 50-51, 899 P.2d at 942-43.